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In the Matter of

Amendment of Rules Governing
Procedures to be Followed When
Formal Complaints Are Filed
Against Common Carriers

CC Docket No. 92-26

ORIGINAL FILE

Bell Atlantic¹ supports the Commission's proposed revisions to its Complaint rules² insofar as those changes will eliminate unnecessary and unproductive pleadings³ and speed up the complaint process.⁴

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, The Diamond State Telephone Company, the four Chesapeake and Potomac telephone companies, and New Jersey Bell Telephone Company.

² Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 92-26, Notice of Proposed Rulemaking, (released March 12, 1992) ("Complaint Rules Notice").

³ The Commission proposes to eliminate the complainant's reply to the answer. See proposed § 1.726. The Commission also proposes to prohibit discovery directed at damages issues until after a finding of liability. See proposed § 1.729(b).

4 The Commission proposes to reduce the period for filing an answer from 30 to 20 days. See proposed § 1.724(a). The Commission also proposes to limit the period within which interrogatories can be filed, and reduce the response time from 30 to 20 days. See proposed § 1.729.

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by the Bureau.⁵ As the Commission notes, complaints frequently feature liability questions that can be resolved without the development of a factual record through interrogatories. Accordingly, in order to streamline and expedite the complaint process, discovery should be allowed only if the Bureau orders it, after a showing by either party that a factual record must be developed before liability can be determined. In contrast, an automatic entitlement to self-executing discovery would guarantee that virtually every case will have discovery -- and discovery disputes -- regardless of whether discovery is needed for resolution of the complaint.

Bell Atlantic also supports the Commission's suggestion of a brief period for settlement negotiations after a finding of liability, but before proceedings to determine damages.⁶ Much unnecessary discovery could be avoided by allowing parties time to settle damages issues.

Several of the Commission's proposals regarding discovery will, however, unnecessarily delay and complicate the resolution of complaints.

⁵ *Complaint Rules Notice* at n. 9.

⁶ Alternative dispute resolution techniques could be employed during this period to narrow the parties' differences and encourage a fair settlement. See *Complaint Rules Notice* at n. 2.

The Commission's proposal to presume that all interrogatories are relevant is unwise and inappropriate.⁷ The mere filing of a complaint does not grant a complainant a license to prowl the defendant's files for whatever might seem interesting.⁸ The only reason for allowing discovery at all is that it might aid in the resolution of issues raised by a complaint or answer. Unless a discovery request is reasonably calculated to do this -- that is, unless it is relevant -- the only justification for the burden it imposes, and the invasion it entails, vanishes. Relevance is therefore essential to valid discovery. If the Commission eliminated the relevance defense, it would guarantee that complainants will engage in ever more sweeping and unnecessary discovery. This will prolong complaint proceedings, and ultimately embroil the Commission in more discovery disputes than under the current rules.

The Commission's companion proposal to treat a failure to answer an interrogatory -- or an "evasive" answer -- as an admission is unfair and unworkable.⁹ Defendants would be entirely without notice as to when an answer is deemed insufficient or evasive, and therefore an admission, or even what has

⁷ *Complaint Rules Notice* at ¶ 15.

⁸ Bell Atlantic's experience is that many "interrogatories" are in fact document requests issued without benefit of a Commission order.

⁹ *Complaint Rules Notice* at ¶ 15.

been deemed to be "admitted."¹⁰ In many cases, this rule could in effect impose a default judgment -- possibly entailing millions of dollars in liability -- a truly draconian sanction for merely supplying an answer that fails to satisfy the proponent of an interrogatory. By turning interrogatories into such potent weapons, the Commission would convert interrogatory discovery from an effort to develop information useful in the resolution of a dispute, into a process to be gamed in the hopes of winning windfall "admissions."

The Commission's proposal to prescribe standard confidentiality arrangements is also inappropriate.¹¹ The Commission's proposed confidentiality provisions may be proper for some confidential information and some cases, but might be too restrictive -- or not restrictive enough -- in other cases. Moreover, there may be situations in which information is so sensitive and important that defendants will not be willing to share it under any circumstances, confidentiality agreement or

¹⁰ In Bell Atlantic's experience, many interrogatories seek disclosure of broad categories of information -- copies of all workpapers underlying a rate, or request that a defendant specify a particular numerical value. The concept of an "admission" simply does not apply to such requests. If a party gives an answer that is deemed "evasive" to an interrogatory that requests a particular Separations value, for example, what fact has been "admitted"?

¹¹ *Complaint Rules Notice* at ¶ 16.

not.¹² Uniform confidentiality arrangements would force all parties into the same mold, whether it fits their situation or not. Accordingly, the Commission should either delete those provisions from its rules, or modify them by stating that use of the Commission's confidentiality ground rules is subject to the mutual consent of both parties.

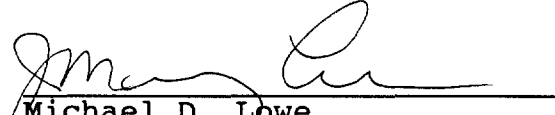
The Commission's proposal that oral directions at status conferences be immediately binding even if not reduced to writing should be revisited. The Commission should not require parties to act on oral directions with respect to discovery matters, given the controversy, expense and complexity of contested discovery. Allowing parties to await the issuance of a written order specifying what is to be produced will eliminate later arguments about whether the producing parties' recollection of the oral direction was correct.

In conclusion, the Commission's proposals to reform its complaint rules contain some useful streamlining of the process. Several of the Commission's proposals to modify the discovery process, however, tread on important rights of the defendants,

¹² For example, in the current ONA proceeding certain of the information regarding the Service Cost Information System ("SCIS") is being shared with intervenors subject to a confidentiality agreement, while other highly proprietary information is only being shared with the Commission and the outside auditor which has been retained at the Commission's direction. See *Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, DA 92-129 (released Jan. 31, 1992).

and will in fact result in more, rather than less, controversy about discovery. The Commission should, therefore, adopt its simplifying proposals for filing opportunities and filing periods, and should provide that discovery during the liability phase of the proceeding is subject to prior written order by the Bureau.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments" was served this 21st day of April, 1992, by delivery thereof by first class mail, postage prepaid, to the parties on the attached list.


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